

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Hye Cha Kim)	File No.: EB-11-AT-0001
)	NAL/Acct. No.: 201232480007
Licensee of Station WDGR(AM))	FRN: 0018897660
Dahlonega, GA)	Facility ID No.: 24459
)	

FORFEITURE ORDER

Adopted: February 25, 2013

Released: February 25, 2013

By the Regional Director, South Central Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Forfeiture Order (Order), we issue a monetary forfeiture in the amount of five hundred dollars (\$500) to Hye Cha Kim, licensee of Station WDGR(AM) in Dahlonega, Georgia (Station), for willfully and repeatedly violating Sections 73.49 and 73.1745 of the Commission's rules (Rules).¹ The noted violations involved Mrs. Kim's failure to enclose the Station's antenna structure within an effective locked fence or other enclosure and failure to adhere to the terms of the Station's authorization.

II. BACKGROUND

2. On August 1, 2012, the Enforcement Bureau's Atlanta Office (Atlanta Office) issued a Notice of Apparent Liability for Forfeiture (NAL)² to Mrs. Kim for failure to enclose the Station's antenna structure within an effective locked fence and failure to adhere to the terms of the Station's authorization. In response to the NAL, Mrs. Kim did not deny any of the facts in the NAL, but nonetheless urged cancellation or reduction of the proposed \$11,000 forfeiture based on her inability to pay.³ Mrs. Kim also stated that the Station has been silent since January 18, 2012, and that she has replaced the Station's transmitter and hopes to be in full compliance when and if the station returns to the air.⁴

III. DISCUSSION

3. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended (Act),⁵ Section 1.80 of the Rules,⁶ and the

¹ 47 C.F.R. §§ 73.49, 73.1745.

² *Hye Cha Kim*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 8912 (Enf. Bur. 2012). A comprehensive recitation of the facts and history of this case can be found in the NAL and is incorporated herein by reference.

³ Letter from Hye Cha Kim to Douglas Miller, District Director, Atlanta Office, Enforcement Bureau at 1 (Aug. 31, 2012) (on file in EB-11-AT-0001) (*NAL Response*).

⁴ *Id.* at 2.

⁵ 47 U.S.C. § 503(b).

⁶ 47 C.F.R. § 1.80.

*Forfeiture Policy Statement.*⁷ In examining Mrs. Kim's response, Section 503(b)(2)(E) of the Act requires that the Commission take into account the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁸ As discussed below, we have considered Mrs. Kim's response in light of these statutory factors, and find that a reduction of the forfeiture is warranted based solely on inability to pay.

4. First, we affirm the *NAL*'s undisputed finding that Mrs. Kim violated Sections 73.49 and 73.1745 of the Rules.⁹ Section 73.49 of the Rules states that "[a]ntenna towers having radio frequency potential at the base . . . must be enclosed within effective locked fences or other enclosures."¹⁰ As reflected in the *NAL*, on January 5, January 11, and again on January 17, 2012, when the Station was in operation and the base of the structure had RF potential, agents from the Atlanta Office observed that a section of the fence surrounding the antenna structure was missing, thereby allowing ready access to the base. Section 73.1745 of the Rules states that "[n]o broadcast station shall operate at times, or with modes or power, other than those specified and made a part of the license, unless otherwise provided in this part."¹¹ As stated in the *NAL*, on January 5, and again on January 11, 2012, agents from the Atlanta Office observed the Station operate after authorized hours with more than the authorized transmitter power. Based on the evidence before us, we conclude that Mrs. Kim willfully and repeatedly violated Sections 73.49 and 73.1745 of the Rules by failing to enclose the Station's antenna structure within an effective locked fence and operating the Station at times and with modes of power inconsistent with the Station's authorization.

5. In the *NAL Response*, Mrs. Kim nonetheless requests cancellation or reduction of the \$11,000 forfeiture based on her inability to pay. With regard to an individual or entity's inability to pay claim, the Commission has determined that, in general, gross revenues are the best indicator of an ability to pay a forfeiture.¹² Based on the financial documents provided by Mrs. Kim, we find sufficient basis to reduce the forfeiture to \$500.¹³ However, we caution Mrs. Kim that a party's inability to pay is only one factor in our forfeiture calculation analysis, and is not dispositive.¹⁴ We have previously rejected inability to pay claims in cases of repeated or otherwise egregious violations.¹⁵ Therefore, future violations of this

⁷ *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997), *recons. denied*, 15 FCC Rcd 303 (1999) (*Forfeiture Policy Statement*).

⁸ 47 U.S.C. § 503(b)(2)(E).

⁹ See *NAL*, *supra* note 2.

¹⁰ 47 C.F.R. § 73.49.

¹¹ 47 C.F.R. § 73.1745.

¹² See *PJB Communications of Virginia, Inc.*, Forfeiture Order, 7 FCC Rcd 2088, 2089 (1992) (forfeiture not deemed excessive where it represented approximately 2.02 percent of the violator's gross revenues); *Local Long Distance, Inc.*, Forfeiture Order, 16 FCC Rcd 24385 (2000) (forfeiture not deemed excessive where it represented approximately 7.9 percent of the violator's gross revenues); *Hoosier Broadcasting Corporation*, Forfeiture Order, 15 FCC Rcd 8640 (2002) (forfeiture not deemed excessive where it represented approximately 7.6 percent of the violator's gross revenues).

¹³ This forfeiture amount falls within the percentage range that the Commission has previously found acceptable. See *supra* note 12.

¹⁴ See 47 U.S.C. § 503(b)(2)(E) (requiring Commission to take into account the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require).

¹⁵ *Kevin W. Bondy*, Forfeiture Order, 26 FCC Rcd 7840 (Enf. Bur., Western Region 2011) (holding that violator's repeated acts of malicious and intentional interference outweigh evidence concerning his ability to pay), *aff'd*, Memorandum Opinion and Order, DA 13-199 (Enf. Bur. Feb. 15, 2013); *Hodson Broadcasting Corp.*, Forfeiture Order, 24 FCC Rcd 13699 (Enf. Bur. 2009) (holding that permittee's continued operation at variance with its

kind may result in significantly higher forfeitures that may not be reduced due to Mrs. Kim's financial circumstances.

IV. ORDERING CLAUSES

6. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.204, 0.311, 0.314, and 1.80(f)(4) of the Commission's rules, Hye Cha Kim **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of five hundred dollars (\$500) for violations of Sections 73.49 and 73.1745 of the Commission's rules.¹⁶

7. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within thirty (30) calendar days after the release date of this Forfeiture Order.¹⁷ If the forfeiture is not paid within the period specified, the case may be referred to the U.S. Department of Justice for enforcement of the forfeiture pursuant to Section 504(a) of the Act.¹⁸ Hye Cha Kim shall send electronic notification of payment to SCR-Response@fcc.gov on the date said payment is made. The payment must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account number and FRN referenced above. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.¹⁹ When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters "FORF" in block number 24A (payment type code). Below are additional instructions you should follow based on the form of payment you select:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

8. Any request for full payment under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 445 12th Street, S.W., Room 1-

construction permit constituted an intentional and continuous violation, which outweighed permittee's evidence concerning its ability to pay the proposed forfeitures).

¹⁶ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80(f)(4), 73.49, 73.1745.

¹⁷ 47 C.F.R. § 1.80.

¹⁸ 47 U.S.C. § 504(a).

¹⁹ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

A625, Washington, D.C. 20554.²⁰ If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

9. **IT IS FURTHER ORDERED** that a copy of this Forfeiture Order shall be sent by both First Class Mail and Certified Mail, Return Receipt Requested, to Hye Cha Kim at her address of record, and to her attorney, Jeffrey L. Timmons, at 1110 Whitehawk Trail, Lawrenceville, GA 30043-7158.

FEDERAL COMMUNICATIONS COMMISSION

Dennis P. Carlton
Regional Director, South Central Region
Enforcement Bureau

²⁰ See 47 C.F.R. § 1.1914.